



Note No. 751

Excellency :

Referring to recent discussions between representatives of the Government of the United States of America and the Government of the Republic of Tunisia regarding the surrender of persons to the International Criminal Court, the Government of the United States of America has the honor to propose the following:

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Recalling that the Rome Statute of the International Criminal Court done at Rome on July 17, 1998 (Rome Statute) by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,

Bearing in mind Article 98 of the Rome Statute, and taking into consideration that both the Government of the United States of America and the Government of Tunisia are not parties to the International Criminal Court,

1. For purposes of this agreement, "persons" are current or former government officials, employees or military personnel or nationals of one party.
2. Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,
 - a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

His Excellency
Habib Ben Yahia
Minister of Foreign Affairs
Tunis

- b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.
3. When the United States extradites, surrenders, or otherwise transfers a person of Tunisia to a third country, the United States will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the express consent of the Government of Tunisia.
 4. When the Government of Tunisia extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Tunisia will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the express consent of the Government of the United States.
 5. Each Party agrees, subject to its International legal obligations, not to knowingly facilitate, consent to, or cooperate with efforts by any third party or country to effect the extradition, surrender, or transfer of a person of the other Party to the International Criminal Court.
 6. Either Party may request consultations regarding cases of special interest.

Should the above proposal be acceptable to the Government of Tunisia, may I suggest, Excellency, that this note and your written reply agreeing with its terms should be considered as an agreement between the Government of the United States of America and the Government of the Republic of Tunisia.

This Exchange of Notes shall come into force on the date of the receipt of the second notification through which the two Parties inform each other of the accomplishment of their internal procedures.

This Exchange of Notes shall remain in force until one year after the date on which one Party notifies the other of its intent to terminate it. The provisions of this Exchange of Notes shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

The English and Arabic language texts of this Note shall be equally authentic. In case of any inconsistency, the English text shall prevail.

Please accept, Excellency, the assurances of my highest consideration.



Embassy of the United States of America,
Tunis, June 5, 2003.

République Tunisienne

Ministère des Affaires Etrangères

LE MINISTRE

Excellency ,

I write to acknowledge receipt of your letter under reference n° 751 and dated june, 5th 2003 in which you stated the following:

“Excellency ,

Referring to recent discussions between representatives of the Government of the United States of America and the Government of the Republic of Tunisia regarding the surrender of persons to the International Criminal Court, the Government of the United States of America has the honor to propose the following:

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Recalling that the Rome Statute of the International Criminal Court done at Rome on July 17, 1998 (Rome Statute) by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,

Bearing in mind Article 98 of the Rome Statute, and taking into consideration that both the Government of the United States of America and the Government of Tunisia are not parties to the International Criminal Court,

1. For purposes of this agreement, “persons” are current or former government officials, employees or military personnel or nationals of one party.
2. Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,

(a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

3. When the United States extradites, surrenders, or otherwise transfers a person of Tunisia to a third country, the United States will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the express consent of the Government of Tunisia.

4. When the Government of Tunisia extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of Tunisia will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the express consent of the Government of the United States.

5. Each Party agrees, subject to its international legal obligations, not to knowingly facilitate, consent to, or cooperate with efforts by any third party or country to effect the extradition, surrender, or transfer of a person of the other Party to the International Criminal Court.

6. Either Party may request consultations regarding cases of special interest.

Should the above proposal be acceptable to the Government of Tunisia, may I suggest, Excellency, that this letter and your reply agreeing with its terms should be considered as an agreement between the Government of the United States of America and the Government of the Republic of Tunisia.

This Exchange of Letters shall come into force on the date of the receipt of the second notification through which the two Parties inform each other of the accomplishment of their internal procedures.

This Exchange of Letters shall remain in force until one year after the date on which one Party notifies the other of its intent to terminate it. The provisions of this Exchange of Letters shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

The English and Arabic language texts of this Letter shall be equally authentic. In case of any inconsistency, the English text shall prevail.

Please accept, Excellency, the assurances of my highest consideration”.

In reply, I have the honor to confirm the agreement of the Government of the Republic of Tunisia to the foregoing.

Please accept, honorable Minister The assurances of my highest considerations.

Done at Tunis on june, 5th 2003

Youssef MOKADDEM



**Secretary of State in charge of
Maghreb and African Affairs**

**The Ambassador of The
United States of America
- Tunis-**